

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Leopordo Zorilla  
a/k/a Alfonso Silverio-Mercedes

PETITIONER;

v

State of New York, Court of Appeals

RESPONDENT:

FILED  
IN CLERK'S OFFICE  
2003 DEC 22 PM 1:35  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

03-12633 NG

*Replied to MJ RBC*

PETITION FOR WRIT OF MANDAMUS

NOW COMES, Alfonso Silverio-Mercedes, petitioner, in pro-se', moving this Honorable court, pursuant to, Federal Rules of Appellate Procedure, (FRAP) Rule 21, and local rule 21, to issue forth the Writ of Mandamus, in the above captioned cause, for the reasons set forth as follows;

- 1). In that the petitioner is a defendant, denied his due process rights to access to the courts, by failing to allow him to proceed with the lawful appeal of the criminal conviction, issued in absentia.
- 2). That the petitioner/defendant, has granted full and fair notice to this court and it's subordinate courts, of the denial of his U.S. Constitutionally affirmed rights to both access to the courts, as provided by Amendment 14, U.S. Const.
- 3). That this court has jurisdiction in both the aforementioned Rules of Court, as well as 28 USC §1361, and the U.S. Const. Amend. 14.

SUMMARY OF THIS PETITION

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Whereas the petitioner/defendant, was convicted in absentia in the Superior Court of the County of Onondaga, State of New York, for a period of three years to, life in prison for Criminal possession of a controlled Substance in the Second degree, along with lesser convictions on July 22, 1993. The conviction was appealed and denied. see, People v Silverio-Mercedes, 239 AD2d 923 (4<sup>th</sup>. Dept. 1997) ly denied 90 NY2d 943.

The defendant, then filed a CPL 440.20, post-conviction challenge of his sentence in absentia, and was denied at the Trial court (supra), after several attempts was granted permission to appeal his, CPL 440.20 denial. Thereafter, he sought over the course of the entire year to effect this appeal to no avail.

Petitioner/defendant, avers that his attempts to file the aforementioned appeal have been denied for failure to comply with the New York Rules of Court, and Appellate Rules. In each event the petitioner has mailed his appeal package of documents effecting the appeal only to have it returned as unfiled due to failure to comply with the required rules and procedures. Petitioner has requested explanation and or copies of these rules to no avail from the courts. Petitioner has requested these same rules and procedures for the custodial state's law library, who refered him to the State law library, who in turn informed him that the information he required was on the internet. Of which he has no access.

Petitioner/defendant, asserts that his denial of these rules and procedures, denying him access to appeal of his criminal sentence, violates his constitutional rights to access the courts, and moves this Honorable court to compel by virtue of the Writ of Mandamus, the lower tribunal as captioned to assure the

...petitioner/defendant, be granted his due process guaranteed him by the U.S. Constitution in Amendment 14.

STATEMENT OF THE CASE

The defendant was indicted by Grand jury in the State of New York, for multiple drug offences and paraphernalia possession offences. The greatest of which was the Criminal Possession of a Controlled substance in the Second degree, punishable by Life imprisonment.

On July 6, 1993, a Jury trial commenced. On the last day of trial the defendant failed to appear and the jury found the defendant guilty on all counts.

On July 22, 1993, the defendant was sentenced in absentia, to an indeterminate sentence of 3 years to life and 3 years to 9 years to run concurrent with each other.

On August 10, 1996, defendant filed a CPL 400 Motion to have his New York sentence run concurrent with his Massachusetts sentence, this Motion was denied by the trial court and appealed to the Fourth Appellate Division along with the conviction and sentence. All were denied in; People v Silverio-Mercedes, 239 AD2d 923, lv. denied 90 NY2d 943 (1997).

On January the current Motion, CPL 440.20, was filed objecting to the deception and procedural defaults and seeking to set aside the sentence in absentia. On March 19, 2002, the Motion was denied by Justice John Brunetti in the trial court.

Since that date, the defendant has made and failed at several attempts to appeal the arbitrary denial. Including, but not limited to contacting law pro bono agencies, law libraries in both states, and all courts in New York, to no

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Statement of the Case, cont.

...avail. Defendant has contacted the States highest court to request assistance in the form of extraordinary writ, and never received a response.

AFFIRMATION

I, Alfonso Silverio-Mercedes, a/k/a Leopordo Zorilla, petitioner, in pro-se', do now swear and attest that the aforementioned facts are true to the best of my knowledge and do so under the pains and penalties of perjury on this, 18 day of December, 2003.

SO SWORN: Alfonso MERCEDES S.

Alfonso Mercedes-Silverio  
Alfonso Silverio MERCEDES

CERTIFICATE OF SERVICE

I, Alfonso Silverio-Mercedes, as petitioner in the aforementioned caused to be mailed by placing a true copy of this, PETITION FOR WRIT OF MANDAMUS, in the ha' hands of the institutional mail officer, in a sealed envelope addressed to the respondant; State of New York's Court of Appeals, at; Clerks Office, Albany, New York 12207-1095, on this 18 day of December, 2003.

SWORN AND CERTIFIED: Alfonso MERCEDES Silverio

Alfonso Mercedes-Silverio  
Alfonso Silverio MERCEDES